International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO *and* Swinerton & Walberg Co.

District Council of Iron Workers of the State of California and Vicinity, AFL–CIO *and* Swinerton & Walberg Co. Cases 21–CD–569, 21–CD–583, and 21–CD–582

September 10, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On September 4, 1991, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondents filed exceptions and a supporting brief. The General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings as modified, and conclusions as modified[1] and to adopt the recommended Order as modified and set forth in full below.

1. The Respondents contend that the Iron Workers District Council is not a proper respondent in the instant case because it did not participate in the 10(k) proceeding, and therefore cannot be found to have violated Section 8(b)(4)(D) by maintaining its lawsuit in district court. We find no merit to this contention. The Respondents have stipulated, and the documentary evidence expressly shows, that the Iron Workers District Council filed its petition to compel arbitration on behalf of itself and its affiliated local unions, including Respondent Iron Workers Local 433, which was a party in the 10(k) proceeding, and that the Respondents have continued to pursue their petition in district court subsequent to the issuance of the Board's Decision and Determination of Dispute. In these circumstances, we conclude that the Iron Workers District Council is a proper respondent in the instant proceeding, because it was acting as an agent of Respondent Iron Workers Local 433 in pursuing the lawsuit. See *Mine Workers (Garland Coal)*, 258 NLRB 56, 59 (1981), enfd. 727 F.2d 954 (10th Cir. 1984).

2. The Respondents further argue that Charging Party Swinerton & Walberg Co. (S&W) subcontracted the disputed work to Industrial Noise Corporation (INC) in violation of a subcontracting clause in the collective-bargaining agreement between the Respondents and S&W, and that they could lawfully pursue a lawsuit against S&W to compel arbitration over the subcontracting violation. In support of this contention, the Respondents cite *Carpenters Local 33 (Blount Bros.)*, 289 NLRB 1482 (1988). We do not agree with the Respondents' assertion that *Blount Bros.* is dispositive of the instant case.

In *Blount Bros.*, the union filed a grievance against Blount, the general contractor who had subcontracted disputed work to a subcontractor. The Board ruled that a 10(k) decision awarding disputed work to employees represented by a different union precluded the grieving union from forcing the subcontractor to assign the work to employees the grieving union represented, but did not preclude the grieving union from asserting its contractual rights against Blount. The Board found that there was no conflict between arbitration of the grievance and the 10(k) award because the union's contract action against Blount would have no effect on the subcontractor's assignment of the disputed work.

In the instant case, S&W, the general contractor, assigns the disputed work and is the employer against whom Iron Workers Local 433 filed a grievance. The work awarded in the 10(k) proceeding requires S&W to make an assignment to employees represented by a different union. Thus, the Iron Workers contract claim is against the same employer, S&W, who is responsible for assigning the work awarded in the 10(k) proceeding. Therefore, contrary to *Blount Bros.*, Respondents' contract claim for employees it represents is inconsistent with the 10(k) award of the work to employees whom a different union represents.

Further, apart from the *Blount Bros.* issue, we find that the Respondents' subcontracting contention is untimely. The Iron Workers Local 433 grievance and the Respondents' lawsuit do not allege a violation of the subcontracting provision of the parties' contract.[2] Rath-

[1] We shall amend the judge's conclusions of law and recommended Order to conform with his findings and the complaint. Specifically, we find, consistent with the judge's discussion, that Iron Workers Local 433's maintaining and attempting to enforce time-in-lieu claims subsequent to the Board's 10(k) determination violate the Act. See *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89, 92 (1988); *Longshoremen ILWU Local 32 (Weyerhaeuser Co.)*, 271 NLRB 759 (1984), enfd. 773 F.2d 1012 (9th Cir. 1985), cert. denied 476 U.S. 1158 (1986). However, in light of *Longshoremen ILWU Local 6 (Golden Grain)*, 289 NLRB 1 fn. 3 (1988), we reverse the judge's finding that the failure and refusal to comply with the 10(k) determination independently violated Sec. 8(b)(4)(ii)(D).

[2] In this regard, we note the following language by the U.S. District Court for Northern California in its December 10, 1990 denial of Local 433's motion to alter, amend, or vacate the court's judgment:

> [Local] 433 contorts the history of this case in its attempt to transform it into a subcontracting clause dispute. The fact of the matter is that the grievance for which petitioner seeks arbitration alleges violation of Section 30(C) of the collective bargaining agreement—the ''jurisdictional disputes'' section of the contract. The grievance makes no mention of an alleged violation of the subcontracting clause of the contract. Similarly, Iron Workers' petition to compel arbitration makes no claim that respondent breached the agreement's subcontracting clause.

er, they allege that S&W's failure to comply with the alleged resolution of the conflicting claims over the disputed work is a breach of a contractual provision pertaining to jurisdictional disputes.[3]

AMENDED CONCLUSIONS OF LAW

Substitute the following for the judge's Conclusion of Law 3:

''3. Respondent International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO has engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(D) of the Act by threatening to picket S&W jobsites and by actually picketing four S&W jobsites and by maintaining and attempting to enforce subsequent to the Board's 10(k) determination time-in-lieu claims for work performed by members of the Carpenters Union with an object of forcing or requiring the Employer to assign the work, described below, to employees represented by Iron Workers rather than to employees represented by Carpenters. The work in question consists of installation of prefabricated acoustical panels on the structural steel frame of the quiet room at the Los Angeles Times printing plant, Los Angeles, California.''

ORDER

The National Labor Relations Board orders that

A. Respondent International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening to picket and actually picketing S&W jobsites with an object of requiring S&W to assign the disputed work to members of Respondent Local rather than to members of the Carpenters.

(b) Maintaining and attempting to enforce subsequent to the Board's 10(k) determination time-in-lieu claims for work performed by members of the Carpenters Union with an object of forcing or requiring the Employer to assign the work, described below, to employees represented by Iron Workers rather than to employees represented by Carpenters. The work in question consists of installation of prefabricated acoustical panels on the structural steel frame of the quiet room at the Los Angeles Times printing plant, Los Angeles, California.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and cease filing in-lieu-of claims for the above-described work performed by members of the Carpenters Union.

(b) Post at its office and meeting halls copies of the attached notice marked ''Appendix A.''[4] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and mail sufficient copies of the notice to the Regional Director for posting by Swinerton & Walberg Co., if it is willing, at all locations on the jobsite where notices to its employees customarily are posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. Respondent District Council of Iron Workers of the State of California and Vicinity, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from maintaining a lawsuit in the U.S. district court seeking to compel S&W to arbitrate certain in-lieu-of grievances and maintaining an appeal from the dismissal of the lawsuit.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw its appeal from the dismissal of its lawsuit C-89-4411, SAW and otherwise withdraw and cease filing or attempting to enforce time-in-lieu claims for the work on the quiet room performed by employees of S&W represented by the Carpenters at the Los Angeles Times project, Los Angeles, California.

(b) Post at its office and meeting halls copies of the attached notice marked ''Appendix B.''[5] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and mail sufficient copies of the notice to the Regional Director for posting by Swinerton &

[3] Because S&W is the assigning employer, because Local 433 did not originally rely on the subcontracting clause in its grievances, and because Local 433 had used picketing, as well as peaceful means, to enforce its claims, Chairman Stephens finds no merit to the Respondent's contentions even under his dissenting opinion in *Laborers Local 731 (Slattery Associates)*, 298 NLRB 50 (1990).

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[5] See fn. 4, above.

Walberg Co., if it is willing, at all locations on the jobsite where notices to its employees customarily are posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX A

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to picket Swinerton & Walberg Co. (S&W) jobsites with an object of requiring S&W to assign the disputed work to members of the Local rather than to members of the Carpenters.

WE WILL NOT maintain and attempt to enforce subsequent to the Board's 10(k) determination time-in-lieu claims for work performed by members of the Carpenters Union with an object of forcing or requiring the Employer to assign the work, described below, to employees represented by Iron Workers rather than to employees represented by Carpenters. The work in question consists of installation of prefabricated acoustical panels on the structural stell frame of the quiet room at the Los Angeles Times Printing Plant, Los Angeles, California.

WE WILL withdraw and cease filing in-lieu-of claims for the above-described work performed by members of the Carpenters Union.

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL NO. 433, AFL–CIO

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to honor and comply with the Board's Decision and Determination of Dispute reported in 298 NLRB 412 (1990), by maintaining a lawsuit in the U.S. district court seeking to compel Swinterton & Walberg Co. to arbitrate certain in-lieu of grievances and by maintaining an appeal from the dismissal of said lawsuit with an object, of requiring Swinerton & Walberg Co. to assign the work to employees represented by International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO rather than to employees represented by the Carpenters.

WE WILL withdraw our appeal from the dismissal of our lawsuit referred to above.

DISTRICT COUNCIL OF IRON WORKERS OF THE STATE OF CALIFORNIA AND VICINITY, AFL–CIO

Frank M. Wagner, Jr., Esq., for the General Counsel.
David Rosenfeld, Esq. (Van Bourg, Weinberg, Roger & Rosenfeld), of San Francisco, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Los Angeles, California, on February 20, 1991,[1] pursuant to a consolidated complaint issued by the Regional Director for the National Labor Relations Board for Region 21 on September 28, 1990, and which is based on charges filed by Swinerton & Walberg Co. (Charging Party or S&W) on October 4 (21–CD–569), September 18 (21–CD–582), and September 20 (21–CD–583). The complaint alleges that International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO and District Council of Iron Workers of the State of California and Vicinity, AFL–CIO (Respondents) have engaged in certain violations of Section 8(b)(4)(ii)(D) of the National Labor Relations Act (the Act).

Issues

1. Whether Respondents have failed and refused to comply with the Board's Order issued in a related 10(k) proceeding and through Respondent District Council, by maintaining and litigating a petition to compel arbitration in the U.S. District Court, Northern District of California, Case C–89–4411, SAW, which seeks to arbitrate the issue of an alleged agreement between International representatives of the Iron Workers and Carpenters to the effect that the disputed work which was the subject of the l0(k) proceeding should be awarded to employees represented by Respondent Local rather than employees represented by the Carpenters.

2. Whether Respondent Local engaged in an unlawful strike at one or more S&W jobsites in support of its demands to be assigned work to which it was not entitled.

3. Whether Respondent Local caused a letter to be sent to S&W in which it unlawfully threatened S&W with picketing or other job action if it refused to proceed to arbitration concerning a grievance over the disputed work.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and to cross-examine

[1] All dates herein refer to 1989 unless otherwise indicated.

witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

Respondents stipulate that Charging Party Swinerton & Walberg Co. is engaged in the construction industry as a general contractor in California, where it annually purchases goods and products valued in excess of $1 million directly from suppliers located outside the State of California. Swinerton is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. (Par. 1, Jt. Exh. 1.)

II. THE LABOR ORGANIZATIONS INVOLVED

Respondents admit, and I find, that they are labor organizations within the meaning of Section 2(5) of the Act. (Par. 2, Jt. Exh. 1.)

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

General Counsel and Respondents entered into a written stipulation of facts (Jt. Exh. 1) based primarily on facts found by the Board in its 10(k) decision in Los Angeles County District Council of Carpenters (Swinerton & Walberg Co.), 298 NLRB 412 (1990).[2] As agreed to by the parties in the stipulation and as further based on certain exhibits entered into evidence by each side without objection, here are the uncontested facts.

S&W is the general contractor for the construction of a printing plant for the Los Angeles Times in Los Angeles, California. In March, S&W subcontracted the construction of a quiet room in the printing plant to Industrial Noise Corp. (INC). As specified in the contract, S&W provided the employees to do the work and INC provided the materials.

S&W hired carpenters rather than ironworkers to install prefabricated acoustical panels on the structural steel frame of the quiet room, because INC had requested a crew of carpenters. INC does not have a contract with either union; however, S&W is party to contracts both with Carpenters District Council and with Respondent Local.

On March 17, Richard Walbourne, S&W's job superintendent, advised Carpenters District Council Business Agent Steven Graves that the quiet room work was being assigned to the Carpenters. Phase 1 of the three phases of the quiet room work began in late March or early April, with carpenters doing the disputed work. Around this time, Respondent Local's business agent, Jim Butner, discussed the work assignment with Walbourne and claimed the work belonged to the Iron Workers.

The Unions' contracts with S&W provide that in the event of a jurisdictional dispute, such as existed on the Los Angeles Times project, International representatives of both unions shall meet to settle the issue, which agreement, if reached, is binding on the Employer. The contracts further provide that if no agreement is reached, the Employer continues with its own work assignment, which in this case means the carpenters continue to do the work. Accordingly, on April 3, Walbourne met with the Unions' local representatives as well as Carpenters International Representative Paul Cecil and Iron Workers International Representative R. W. Lansford. Respondent Local contends that the International representatives agreed on April 3 that the disputed work belonged to the Iron Workers. However, others in attendance at this meeting do not agree that this occurred.

More specifically, according to Carpenters District Council, Cecil was unfamiliar with the material being used at the April 3 meeting. For that reason, Cecil entered into an agreement with Lansford to contact Walbourne with a final decision after further investigation. According to Walbourne, he left the April 3 meeting with the impression that the work had been given to the Iron Workers, but that the parties would get back to him about the matter.

On April 4, Douglas McCarron, secretary-treasurer of Carpenters District Council, who apparently had not been at the meeting the day before, called Walbourne and told him to disregard Cecil's comments at the April 3 meeting because Cecil had misunderstood the type of material at issue. What Cecil had stated on April 3 is not contained in the record. Also on April 4, McCarron sent a confirming letter to Walbourne, which letter also does not appear in the record.

In light of the Carpenters District Council's continuing claim for the work, S&W began phase 2 of the disputed work using carpenters to perform said work. Respondent Local again objected and continued to assert its claim during another meeting on June 6, where the carpenters also claimed the work.

On June 8, Respondent Local sent S&W a letter, which is not in this record, stating its position that agreement had been reached at the April 3 meeting and that accordingly by operation of the contract, the work belonged to the Iron Workers. To further enforce its claim, Respondent Local on June 13, filed a grievance alleging S&W breached the contract provision referred to above, requiring S&W to reassign the work as agreed to by the International representatives (G.C. Exh. 2). A board of adjustment notice (G.C. Exh. 3) was duly prepared and issued.

After the board of adjustment deadlocked on July 13 over the grievance issue, Respondent Local sought to proceed to arbitration on the matter, but S&W refused.

Meanwhile, S&W attempted to resolve the matter by resort to the ''Plan for Settlement of Jurisdictional Dispute in the Construction Industry.'' However, on August 31, an arbitrator ruled that neither the plan nor the arbitrator had jurisdiction to decide the dispute because S&W was not timely stipulated to the plan.

On September 18, Respondent Local's attorney sent S&W a letter, which is not contained in the record, stating that Respondent Local was not making any jurisdictional claims, but was merely trying to take a contractual issue, i.e., the refusal to implement the alleged April 3 agreement on work assignments, to arbitration. The letter continued that a failure to proceed to arbitration would result in the attorney advising Respondent Local that it was free to take job action to protest S&W's failure to proceed to arbitration.

On October 2, S&W met with representatives of Carpenters District Council to ask for their position on a pos-

[2] No representative of S&W attended the hearing, or subsequently objected to the stipulation.

sible reassignment to members of the Iron Workers of work on phase 3, scheduled to begin in late November. In reply, the representatives stated the Carpenters would take economic action in the event of a reassignment of the work.

On October 16 and 17, Respondent Local picketed the Los Angeles Times printing plant jobsite and three other S&W jobsites in the Los Angeles area with picket signs reading, ‘‘Swinerton & Walberg refuses to comply with grievance and the arbitration procedures.’’ This picketing concerned the work assignment dispute as described in these facts. In fact on October 17, Matt Mattovich, a business representative of Respondent Local, told Jon Crook, S&W job superintendent, at a Los Angeles area jobsite, that the ironworkers picketing resulted from the problem at the Los Angeles Times printing plant jobsite and concerned the dispute between Iron Workers and Carpenters with respect to the assignment of the work of installing acoustical panels in the quiet room.

On December 13, Respondent District Council, on behalf of itself and its affiliated Local Unions, including Respondent Local, pursuant to Section 301 of the Act, filed a petition to compel arbitration in United States District Court, Northern District of California, against S&W (C–89–4411, SAW) (G.C. Exh. 4).

On April 30, 1990, the Board issued its Decision and Determination of Disputes in the l0(k) phase of the instant dispute which is reported at 298 NLRB 42. In its decision, the Board awarded the disputed work to members of the Carpenters.

On October 4, 1990, the Honorable Stanley Weigel, U.S. District Judge, entered a memorandum and order granting S&W's Motion for Summary Judgment (G.C. Exh. 5). Subsequently, Respondents filed a motion asking the court to alter, amend, or vacate the court's October 4, 1990 order, which motion was denied on December 10, 1990 (G.C. Exh. 6).[3] On January 9, 1991, Respondent District Council of Iron Workers filed its notice of appeal to the Ninth Circuit Court of Appeals from the district court's December 10, 1990 memorandum and order (G.C. Exh. 7). So far as the record shows, the court of appeals has not yet decided the appeal.

Finally, since April 30, 1990, Respondent Local has failed and refused to give written assurances to Region 21 of the Board that it would comply with the Board's l0(k) Decision and Determination of Dispute referred to above. The parties to the written stipulation have agreed that the failure to give such written assurances is not 8(b)(4) conduct. (Par. 17, Jt. Exh. 1.)

B. *Analysis and Conclusions*

As noted above, the Board issued its Decision and Determination of Dispute in the underlying l0(k) proceeding on April 30, 1990 (298 NLRB 412). To explain the relationship between the l0(k) proceeding and the instant case, I look to the Board's decision in *Longshoremen ILWU Local 6 (Golden Grain)*, 289 NLRB 1, 2 (1988), where the Board explained,

> An 8(b)(4)(D) proceeding, unlike a l0(k) proceeding, is an adjudicatory proceeding required to be conducted pursuant to the Administrative Procedure Act, 5 U.S.C. § 554. As the Supreme Court noted in *ITT v. Electrical Workers IBEW Local 134*, 419 U.S. 428, 446 (1975), relying on the following footnote from *NLRB v. Plasterers Local 79*, 404 U.S. 116, 122 fn. 10 (1971):
>
>> The 10(k) determination is not binding as such even on the striking union. If that union continues to picket despite an adverse 10(k) decision, the Board must prove the union guilty of a[n] 8(b)(4)(D) violation before a cease-and-desist order can issue. The findings and conclusions in a l0(k) proceeding are not res judicata on the unfair labor practice issue in the later § 8(b)(4)(D) determination. *Typographical Union*, 125 NLRB 759, 76l (1959). Both parties may put in new evidence at the § 8(b)(4)(D) stage, although often, as in the present cases, the parties agree to stipulate the record of the 10(k) hearing as a basis for the Board's determination of the unfair labor practice. Finally, to exercise its powers under § 10(k), the Board need only find that there is reasonable cause to believe that a § 8(b)(4)(D) violation has occurred, while in the § 8(b)(4)(D) proceeding itself the Board must find by a preponderance of the evidence that the picketing union has violated § 8(b)(4)(D). *Typographical Union*, supra, at 761 fn. 5 (1959).
>
> Therefore, when a l0(k) determination does not end the work dispute, the proceeding becomes adjudicatory following the issuance of an unfair labor practice complaint. *Bricklayers v. NLRB*, 475 F.2d 1316, 1322 (D.C. Cir. 1973), enfg. 188 NLRB 148 (1971). At that point, if a genuine issue of material fact exists whether an unfair labor practice has occurred, a hearing before an administrative law judge is required, even if the issue was previously litigated in the underlying l0(k) proceeding. In this regard, we find that a genuine issue of material facts exists when there are credibility issues to be resolved or when a respondent denies the existence of an element of the 8(b)(4)(D) violation, either directly or by raising an affirmative defense. An 8(b)(4)(D) respondent is not, however, required to proffer new and previously unavailable evidence in order to be entitled to a hearing.[4]

The Board further explained, id. at 1 fn. 3, that Respondent's failure there to promise compliance with the l0(k) determination does not serve as an independent basis for finding an 8(b)(4)(D) violation. Rather, such noncompliance serves as a triggering event for the issuance of a complaint (citations omitted). Because the triggering event occurred in

[3] Also admitted into evidence in the instant proceeding is a declaration of C.W. Lansford in support of Respondent District Council of Iron Workers Motion for Summary Judgment (R. Exh. 1), the same party's Memorandum of Points and Authorities in Support of Petitioner's Motion for Summary Judgment (R. Exh. 2), and its Memorandum of Points and Authorities in Support of Motion for Alteration, Amendment or Vacation of Judgment (R. Exh. 3).

[4] The Board will not, however, relitigate threshold matters that are not necessary to prove an 8(b)(4)(D) violation. See *Bricklayers*, above, in which the court found the threshold issue of whether there had been an agreed method of settlement had been resolved by the Board in the l0(k) proceeding.

the present case, a complaint has issued and the allegations therein must be adjudicated.

Section 8(b)(4)(D) makes it an unfair labor practice to take coercive action with the object to ‘‘force or require any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, rather than to employees in another trade, craft, or class . . . .’’ In order to find reasonable cause to believe Section 8(b)(4)(D) has been violated, ‘‘there must be evidence that one group of employees has exerted improper pressure upon the Employer to compel it to assign certain work to that group of employees rather than to another group which also seeks work.’’ *Laborers Local 964 (Eastern Steel),* 302 NLRB 238 (1991).

1. Picketing and threats to picket

Under the circumstances present in this case, I find that Respondent Local violated Section 8(b)(4)(ii)(D) by threatening to picket through the September 18 letter sent by the Local’s attorney to S&W. I also find that on October 16 and 17, Respondent Local violated the same provisions of the Act by actually picketing four S&W jobsites, including the Los Angeles Times printing plant jobsite which is directly in issue in this case. The admission of Respondent Local Agent Mattovich, as recited in the facts, together with other facts and circumstances contained in this case is ample evidence to show than an object of the picketing and the prior threat to picket was to require S&W to assign the disputed work to members of the Respondent Local, rather than to the Carpenters. *Iron Workers Local 568 (Dickerson Structural)*, 204 NLRB 59 (1973); *Laborers Local 104 (ACMAT Corp.)*, 300 NLRB 1022 (1990). See also *New Orleans Typographical Union 17 (E.P. Rivas) v. NLRB*, 368 F.2d 755, 762 (5th Cir. 1966).

2. Filing and maintenance of ‘‘Payment In Lieu’’ grievance

I begin by considering the status of Respondent District Council as urged in Respondents’ brief (pp. 1–2). In agreement with Respondents, I find that Respondent District Council was not involved in the 10(k) proceeding, either as a party or so far as I can tell, as a participant. However, I do not therefore conclude that Respondent District Council should be dismissed from this proceeding. No cases are cited for this contention. As noted in the facts, Respondent District Council on behalf of itself and its affiliated Local Unions, including Respondent Local, filed a Petition to compel arbitration in the U.S. district court against S&W. The unchallenged standing which Respondent District Council asserted in filing the Petition means that it is a proper party in the instant case. Cf. *Broadcast Employees NABET*, 230 NLRB 75 (1977). If this were not so, a union local would be able to circumvent and undermine the Board’s 10(k) Decision and Determination of Dispute merely by the technicality of substituting a related union entity as a petitioner in Federal court. In moving to the merits of this segment of the case, I begin with the case of *Longshoremen ILWU Local 13 v. NLRB*, 884 F.2d 1407, 1409 fn. 2 (D.C. Cir. 1989), which explains that a claim for time-in-lieu payment is made when one employee group (herein the Iron Workers) asserts a right to payment for work, which it believes it was entitled to perform, although it did not have an opportunity to do so, because it was not assigned the work. I agree with the General Counsel (Br. at 17) that both the Board and courts have held that claims for time-in-lieu payments state a demand for the assignment of work which violate Section 8(b)(4)(D) when the claims are inconsistent with an extant 10(k) decision. I find in this case that Respondent Local’s claim for time-in-lieu payments is inconsistent with the Board’s underlying 10(k) decision. *Longshoremen ILWU Local 13 (Sea-Land Service)*, 290 NLRB 616 (1988), enfd. 884 F.2d 1407 (D.C. Cir. 1989).

The above discussion does not end the inquiry for Respondents contend that the case of *Longshoremen ILWU Local 7 (Georgia-Pacific)*, 291 NLRB 89 (1988), affd. 892 F.2d 130 (D.C. Cir. 1989), contains the final word on the pending issue. In that case, the Board held, after its earlier decision had been remanded by the U.S. Court of Appeals for the Ninth Circuit, that the union’s filing of arguably meritorious work assignment grievances prior to the Board’s award under Section 10(k) does not constitute coercion within the meaning of Section 8(b)(4)(ii)(D).

In the *Georgia Pacific* case the ILWU filed time-in-lieu grievance which ultimately resulted in a favorable decision from an arbitrator. Subsequently the Board awarded the disputed work to a competing union. After the Board’s 10(k) decision, the ILWU continued to submit grievances claiming payment in lieu of the work. Only the grievances filed after the Board’s 10(k) award were found to constitute coercion under the Act, and the reviewing court affirmed the Board’s judgment.

In the instant case, Respondent Local filed its time-in-lieu grievances on June 13 long before the Board announced its decision in the 10(k) case on April 30, 1990. Unlike the *Georgia-Pacific* case, Respondent Local here has never received a favorable arbitration-decision. Accordingly, I question whether the grievance at issue in this case can be properly characterized as ‘‘arguably meritorious.’’ However, I need not decide this point. Assuming for the sake of argument that Respondent Local’s pre-10(k) grievance was ‘‘arguably meritorious,’’ it makes no sense to permit Respondent Local to continue to pursue its grievances, since this effort runs directly contrary to the Board’s 10(k) award, and if the Respondents ultimately were to prevail, the Board’s 10(k) decision would be undermined.

In light of the above, I agree with General Counsel (Br. at 19) that pursuing a grievance, either in arbitration or before a court, seeking ‘‘time in lieu’’ payments inconsistent with the Board’s 10(k) award seeks to achieve a prohibited objective (under *Bill Johnson’s Restaurant v. NLRB*, 461 U.S. 731 (1983)), i.e., to obtain the proceeds of work that the Union is not entitled to perform and any such action lacks a reasonable basis in fact and law. *Longshoremen ILWU Local 32 (Weyerhauser Co.)*, 271 NLRB 759 (1984), affd. 773 F.2d 1012 (9th Cir. 1985), cert. denied 476 U.S. 1158 (1986).

I conclude and find therefore that by maintaining in lieu of claims and by maintaining a Section 301 petition seeking to force arbitration of an issue which the Board has already decided adversely to Petitioner, Respondents are attempting to undermine the Board’s authority to resolve jurisdictional disputes. Respondents have failed to comply with the Board’s 10(k) Decision and Determination of Dispute and have engaged in prohibited economic coercion of Swinerton & Walberg Co. with an object of forcing or requiring the company to assign the disputed work to members of Respondent Local rather than to employees who are members of the Carpenters. The conduct violates Section 8(b)(4)(ii)(D) of the Act substantially as alleged in paragraphs 8–10 of the complaint, and I so find.

Conclusions of Law

1. Swinerton & Walberg Co. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO and District Council of Iron Workers of the State of California and Vicinity, AFL–CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent International Association of Bridge, Structural & Ornamental Iron Workers, Local No. 433, AFL–CIO has engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(D) of the Act by threatening to picket S&W jobsites and by actually picketing four S&W jobsites and by filing time-in-lieu claims for work performed by members of Carpenters with an object of forcing or requiring the Employer to assign the work, described below, to employees represented by Iron Workers rather than to employees represented by Carpenters, and by failing and refusing to comply with the Board's Decision and Determination of Dispute reported at 298 NLRB 412 (1990). The work in question consists of installation of prefabricated acoustical panels on the structural steel frame of the quiet room at the Los Angeles Times printing plant, Los Angeles, California.

4. Respondent District Council of Iron Workers of the State of California and Vicinity, AFL–CIO has engaged in unfair labor practices proscribed by Section 8(b)(4)(ii)(D) of the Act by maintaining a lawsuit in the U.S. district court seeking to compel S&W to arbitrate certain in lieu of grievances and by maintaining an appeal from the dismissal of said lawsuit.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that Respondents have engaged in and are engaging in certain unfair labor practices, I shall recommend that they be ordered to cease and desist and to take certain affirmative action designed to effectuate the purposes of the Act.

[Recommended Order omitted from publication.]